IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

Crl.MC.No. 1205 of 2007()

CC.486/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

.....

PETITIONER: ACCUSED

---

1. SHIRAS, S/O KOYAKUNHI, AGED 26 YEARS,
   ZAMEENAS, CHIRAKKAL KOLAM, KANNUR-3.

2. MURSHID, S/O MUSTAFA, AGED 26 YEARS,
   PP HOUSE, CHIRAKKAL KOLAM, KANNUR.

BY ADV. SRI.P.M.PAREETH

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY
S.I.OF POLICE, KANNUR CITY POLICE STATION,THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PR0SECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/04/2007 ALONG WITH CRL.M.C.1209 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.1205 & 1209 of 2007

Dated this the 13th day of April, 2007

ORDER

The petitioners are accused in two separate prosecutions, inter alia, under Section 3(1) of the P.D.P.P Act in one case and under Section 323 read with 149 I.P.C in the other. Trial against the co-accused has been completed. They have been found not guilty and acquitted. The petitioners were not available for trial and therefore the cases against them were split up. The petitioners have now appeared before the learned Magistrate. Charges have not been framed. The petitioners have rushed to this Court at this point with a prayer that the proceedings against them may be quashed.

2. What are the reasons ? Except that the co-accused have been acquitted, no other specific ground is raised. Of course, there is a contention that the petitioners are entitled for discharge. In the light of the acquittal of the co-accused already, charges are not liable to be framed for various offences alleged against the petitioners, it is contended.

3. The acquittal of the co-accused by itself, cannot operate as a valid ground for the absconding accused to claim quashing of proceedings by invoking the extraordinary inherent jurisdiction under Section 482 Cr.P.C. The position has been made clear in [**Moosa v.**

Sub Inspector of Police [2006(1) KLT 552] by a Full Bench of this Court.

4. The learned counsel for the petitioners then only submits that the petitioners may be given permission to argue for discharge under Section 239/240 Cr.P.C. The petitioners shall certainly be entitled to claim premature termination of proceedings at the appropriate stage before the learned Magistrate.

5. The learned counsel for the petitioners submits that if the learned Magistrate were to insist on the personal appearance of the petitioners on all dates of posting, it would cause great hardship and prejudice to the petitioner. I find no reason why the learned Magistrate must insist on personal appearance of the petitioners on all dates of posting. Certainly till a decision is taken under Section 240 Cr.P.C to frame charges, the petitioners, who have allegedly appeared already and have been enlarged on bail, can claim to be represented by their counsel. Necessary applications to that effect can be made by the petitioners and I find no reason why the learned Magistrate should not consider such applications in accordance with law and favourably.

6. With the above observations, these Crl.M.Cs are, dismissed.

(R.BASANT, JUDGE)

rtr/-